

1 A. Right.

2 Q. No problems?

3 A. No.

4 Q. Then what happened?

5 A. And then I backed away and started heading
6 for the dredge.

7 Q. Okay.

8 A. Then the boat stalled.

9 Q. It just stalled right out?

10 A. Stalled right out, right.

11 Q. How far away from the sea wall were you when
12 it stalled out?

13 A. 20, 25 feet.

14 MR. MURPHY: Would this be a time to
15 take five minutes?

16 MR. ROSENTHAL: Sure.

17 (A short recess was taken.)

18 Q. The vessel stalled, the skiff stalled, right,
19 that's where we left off?

20 A. Yep.

21 Q. How far from shore were you?

22 A. I would say 20, 25 feet I would say.

23 Q. From the sea wall?

24 A. From the sea wall, right.

1 Q. So what happened?

2 A. I tried to get it started and I couldn't.

3 Q. What did you do to try to get it going again?

4 A. I -- there's a ball on it for fuel and I
5 tried to pump it to get the pressure back up
6 and it didn't go. So I, I was lucky the tide
7 was going out, headed towards the dredge, the
8 tide was headed that way. So I just went and
9 I leaned up against the stern of the dredge.

10 Q. So you let the vessel drift to the back to
11 the dredge?

12 A. Back to the dredge, right.

13 Q. When you stalled off, you stalled out, you're
14 25 feet from the sea wall?

15 A. Yeah, more or less, right.

16 Q. Did you yell to the supervisor?

17 A. No, he was already on his way.

18 Q. Was there anybody --

19 A. There was no one there. The only one that
20 saw me once I got close enough, because I
21 yelled to him, was Frankie Pilate who was
22 welding on the back deck. And he came and he
23 grabbed the line for me and tied it off.

24 Q. How long did it take you to drift from the

1 sea wall?

2 A. Not very long. Five minutes tops. And I
3 mean that's playing with it, trying to get it
4 fired up the whole time.

5 Q. What's the distance from where you stalled
6 out to back to the barge?

7 A. Anywhere from, I don't know, 50 feet, a
8 hundred feet maybe. I don't even know.
9 Somewhere around there. It wasn't that far.

10 Q. Where you stalled out, could you have yelled
11 out to the fellows on the barge?

12 A. No, not at first.

13 Q. Because you were too far away?

14 A. Well, mean I probably could have because I
15 knew where I was headed and I was safe.

16 Q. As you got closer, did you yell to them or
17 signal them?

18 A. I yelled to Frankie Pilate.

19 Q. And he was on the --

20 A. He was on the stern.

21 Q. Of the barge?

22 A. Right. Of the dredge.

23 Q. Then what happened?

24 A. When I landed, I threw him a line and he

1 tied it off for me.

2 Q. What did he tie it off to?

3 A. To a cleat.

4 Q. On the dredge?

5 A. On the dredge.

6 Q. Then what happened?

7 A. And then I took the engine cover off to see
8 if I could get it going and I pumped it up
9 some more, and I did get it running, and then
10 it stalled again. And then I got it running
11 again and it continued to run. And I waited
12 and I was going to start passing the bolts up
13 and I said no, I'll just go around. And then
14 once I put it in gear, I left the line on
15 just to make sure because you don't want to
16 play. And then I, it stalled again so I just
17 said no, that's it. I took the cover back
18 off and then I went -- then the captain came
19 over and he said what are you doing? We need
20 these bolts on the other side.

21 Q. On the other side of what, the barge?

22 A. On the other side of the dredge, right.

23 Q. The dredge?

24 A. Right.

1 Q. Okay. Let me just back you up a little
2 because we went through that a little quick
3 then.

4 so you drift back to the dredge?

5 A. Right.

6 Q. You see Frank and you wave him down?

7 A. Right.

8 Q. And he gives you a hand tying the skiff to
9 the dredge?

10 A. I threw him a line and he tied me off,
11 right.

12 Q. And then you bored the dredge?

13 A. No.

14 Q. Tell me, you stay on the skiff?

15 A. I stayed on the skiff.

16 Q. And went to work on the engine?

17 A. Right.

18 Q. You took the cover off the outboard motor?

19 A. Right.

20 Q. And what specifically did you try and do?

21 A. I was just -- I wanted it to have air for
22 one and I squeezed a ball on the fuel tank.

23 Q. How did you try and give it air?

24 A. It will, yeah, because the fuel system goes

1 inside them and there's little filters. And
2 I wanted to make sure the little filters and
3 everything --

4 Q. So you're pretty familiar with these --

5 A. Absolutely.

6 Q. -- with these outboard motors?

7 A. Right.

8 Q. And that's just based on your years as a
9 maritime worker?

10 A. Right. I live on the water.

11 Q. So you felt well qualified to do the job you
12 were doing at the time?

13 A. I didn't do anything. I just pumped it up
14 and that's what you do.

15 MR. ROSENTHAL: Objection to form.

16 Q. And then you tried to get it going again?

17 A. Right.

18 Q. But you left it tied onto the dredge?

19 A. Right.

20 Q. And eventually you succeeded in getting it
21 going again?

22 A. It did run, yeah, it was running.

23 Q. And then it stalled out again?

24 A. The second time it stayed running at an
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1 idle. It wasn't in gear of course.

2 Q. The first time it stalled out?

3 A. Right.

4 Q. Did you have an opinion as to why it stalled
5 out?

6 MR. ROSENTHAL: Objection.

7 A. I just figured it needed more fuel. I just
8 pumped the ball up. It stayed running so I
9 assumed that's what it was.

10 Q. The second time?

11 A. Right.

12 Q. And then take me through it again, then what
13 happened?

14 A. And then it kept running. So then Kenny
15 King said hey, I need you to come around the
16 other side of the dredge so we can get these
17 bolts off so we can hook up the shanks.

18 Q. Is that what he specifically told you?

19 A. Yeah. Well, not word for word.

20 Q. Right.

21 A. Right.

22 Q. Did Kenny King at that time know that the
23 vessel stalled out when you --

24 A. Yes.

1 Q. Out by the sea wall?

2 A. Yes.

3 Q. How did he know that?

4 A. Because I told him.

5 Q. You had a conversation?

6 A. Right.

7 Q. You said hey, this thing stalled out?

8 A. This thing is stalling out, wait.

9 Q. What did he say to you?

10 A. And he said I need this around here now.

11 Not in those exact words.

12 Q. Well, you told him that the vessel stalled
13 out on your way back from the sea wall?

14 A. Right.

15 Q. And then you told him that you had gotten
16 it --

17 A. I told him it had stalled out again. And he
18 said, I don't care. I need those over there
19 now.

20 Q. At the time that you had this discussion with
21 Kenny King, the motor's running, though,
22 right?

23 A. Right.

24 Q. And it didn't stall out the second time?

1 A. No.

2 Q. So when you say he said, I don't care, bring
3 that around now, I mean, you didn't have any
4 concern with bringing the vessel around?

5 MR. ROSENTHAL: Objection.

6 A. It was still running.

7 Q. That's right. So I'm --

8 A. Right, right.

9 Q. So at that time at least you didn't have any
10 concern bringing the skiff over to the other
11 side of the dredge?

12 MR. ROSENTHAL: Objection.

13 A. No.

14 Q. No concern?

15 MR. ROSENTHAL: Objection.

16 A. No.

17 Q. So this, when you just said a moment ago that
18 Kenny King said I don't care, bring it
19 around --

20 A. Right.

21 Q. -- is that what he said, I don't care because
22 he would have --

23 A. Because I told him I wasn't bringing it
24 around right yet. I want to make sure it

1 wasn't going to stall. You let an engine
2 run. Because what had happened, I had run it
3 all the way over to the wall and all the way
4 back, and what I figured, it will sucking up
5 air and then it will starve it of fuel. And
6 that's what I figured was happening. So I
7 let it sit there. And he said, I don't care,
8 get it around there, I want to get these
9 bolts.

10 Q. So at that time did you think there was a
11 risk that the vessel was going to stall
12 again?

13 MR. ROSENTHAL: Objection.

14 A. I wasn't sure. It wasn't stalling. I
15 waited.

16 Q. Oh, you waited?

17 A. Like I told him, I waited. Yeah. And then
18 we had words.

19 Q. Right.

20 A. Right. Which I won't mention the words.
21 And then he untied my vessel and threw the
22 line in and said get that over there now.

23 Q. Okay. So Kenny King said I want the vessel
24 over there now.

1 A. More than once.

2 Q. And you said you wanted to keep the vessel
3 there to see it -- to let it run for a while?

4 A. To let it run, right. Until I felt it was
5 safe and then I did feel it was safe. And at
6 first he threw the line in and I said I'm not
7 going anywhere right now.

8 Q. So you didn't listen to him?

9 A. The first time?

10 Q. Right.

11 A. Right.

12 Q. Then what happened the second time?

13 A. I moved it. I backed it up.

14 Q. Why did you move it the second time?

15 A. It was running, so I backed it up.

16 Q. So you thought it was safe to move it when
17 you moved it?

18 A. Yeah. It --

19 MR. ROSENTHAL: Objection.

20 A. -- it hasn't stalled.

21 Q. I want to make sure. If Kenny King or
22 anybody else for that reason tells you to do
23 anything that you think is unreasonably safe
24 you're not going to do --

1 MR. ROSENTHAL: Objection.

2 A. I'm not going to do it.

3 Q. And that's so when Kenny King told you to
4 move the vessel the first time, the skiff --

5 A. Right.

6 Q. -- you didn't think it was safe to do it so
7 you didn't?

8 A. I didn't, right.

9 Q. But when you did move it, you thought it was
10 safe to move?

11 A. Right.

12 Q. And then you were bringing the skiff around
13 to the other side of the dredge so that --

14 A. No.

15 Q. You tell me, I'm sorry.

16 A. No, I had to back away. I have two wires on
17 the stern as I told you, the wires that move
18 the dredge back and forth.

19 Q. Right.

20 A. You can't go under them. You have to back
21 away from them and then go around them. And
22 that's what I did.

23 Q. So you're backing up?

24 A. Backing up through the wires.

1 Q. With the skiff?

2 A. Right.

3 Q. For the purpose of bringing the skiff around
4 to the other side of the dredge so that you
5 can unload the boxes?

6 A. Right.

7 Q. That you had picked up at the sea wall?

8 A. Right.

9 Q. How big is the dredge?

10 A. I believe it's 130 feet, 130, maybe 140.

11 I'm not sure.

12 Q. 140 feet long?

13 A. Long.

14 Q. What's the beam?

15 A. Maybe 60. I'm not sure.

16 Q. So why wouldn't you just unload the boxes
17 where you were and carry them across?

18 A. He didn't want to carry them all the way
19 into the bow of the -- bow of the dredge.

20 Q. How far would that have been?

21 A. 70 feet maybe.

22 Q. And would that be typical?

23 A. No.

24 MR. ROSENTHAL: Objection.

1 A. Normally you would go around.

2 Q. That's the way to do it?

3 A. Less work.

4 Q. Right. There's no sense creating work.

5 A. Right.

6 Q. So you backed the vessel, the skiff out like
7 you've described and then what happened?

8 A. The engine revved up like I had just thrown
9 it in neutral but I didn't. It was still in
10 reverse, but it was running and the propeller
11 wasn't going.

12 Q. So even though it was in reverse, the vessel
13 was in neutral or sounded like it was in
14 neutral?

15 A. It sounded like it was in neutral.

16 Q. And you stopped making --

17 A. I stopped making.

18 Q. -- way?

19 A. Right. I wasn't going in reverse any more.

20 Q. You were just sitting still?

21 A. Well, I had been backing up and it was where
22 I was going to start going forward again.
23 And then I went to go into forward to get
24 back to the dredge and then it just stalled.

1 Q. So at this point how far from the dredge are
2 you?

3 A. 15, 20 feet. Just far enough away from the
4 wires.

5 Q. To get away from the wires?

6 A. Right.

7 Q. And the vessel stalls?

8 A. Right.

9 Q. And so what did you do?

10 A. After it stalled?

11 Q. Yes.

12 A. I tried to keep starting it.

13 Q. Unsuccessfully?

14 A. Right.

15 Q. And then what happened?

16 A. And then it went over to the barge, not the
17 dredge, but the barge is tied to the dredge
18 as I explained, and it hit the rake of the
19 barge. And as it did, it started filling up
20 with water.

21 Q. The skiff then is now drifting?

22 A. No, the skiff -- it was drifting until it
23 hit the barge.

24 Q. That's what I'm -- I'm backing up a bit.

1 A. Yeah.

2 Q. And so it's drifting and it drifts into the
3 barge?

4 A. Right.

5 Q. What part of the skiff hits the barge?

6 A. The port side.

7 Q. And where on the port side was it, was it
8 the --

9 A. The whole side. It hit.

10 Q. Just like that?

11 A. Right.

12 Q. And it hit the rake of the barge?

13 A. Right.

14 Q. And explain for us what you mean by the rake
15 of the barge.

16 A. There's a slant, like the front of your
17 boat.

18 Q. Right.

19 A. Right.

20 Q. And what's the purpose of the rake on the
21 barge?

22 A. So when you tow, you're not towing a flat
23 surface into water.

24 Q. So the port side of the skiff hits the rake

1 of the barge?

2 A. Right.

3 Q. And how fast was the skiff going when it hit
4 the rake of the barge?

5 A. Not very fast. There was no power.

6 Q. It was drifting?

7 A. It was drifting. Drifting as fast as the
8 tied was going. Which was at the time maybe
9 seven to ten knots or so.

10 Q. How was it, then, that the skiff started
11 filling up with water?

12 A. Once it hit the rake, it has rubber all
13 along the side of it, of the -- I'm sorry, of
14 the skiff there's rubber. So when you run
15 into something, it doesn't damage it. And
16 then it grabbed it and started taking on
17 water on the starboard side.

18 Q. I'm still not understanding how that
19 happened.

20 A. It was like this --

21 Q. Because from the drifting speed and the
22 skiff --

23 A. Right. The tied is running at about ten
24 knots.

1 Q. And so it hits it and what forces it under?

2 A. It doesn't go that way.

3 Q. Tell me go?

4 A. It goes this way.

5 Q. It goes up?

6 A. It starts riding up the rake, but at the
7 same time it's taking on water, up and down
8 at the same time.

9 Q. So from the starboard side?

10 A. Right.

11 Q. So the port side of the skiff rides up the
12 rake?

13 A. Right.

14 Q. Which dips the starboard rail?

15 A. Starboard side.

16 Q. And that's --

17 A. That's when it starts take on water, right.

18 Q. Did you try to fend off the barge at all?

19 A. Yeah, yeah, oh, yeah. I kept trying to get
20 it running until she started taking on water
21 and that was it. And I was off.

22 Q. And so now?

23 A. I ran and jumped as far as I could get away
24 off the bow.

1 Q. The skiff's taking on water and you don't --
2 you couldn't just go up on the barge?

3 A. No. I couldn't reach the top of the barge.

4 Q. Okay, I'm just asking you. I'm just trying
5 to visualize the whole thing.

6 A. Yeah.

7 Q. So you jumped off the skiff. And from where
8 on the skiff did you jump off?

9 A. From the bow.

10 Q. And you jumped forward?

11 A. Right.

12 Q. Okay.

13 A. Which would put me behind the dredge in the
14 water which is where I wanted to be.

15 Q. And then what happened?

16 A. Then the tide took me. There's a tire on
17 the side of the dredge, big tractor trailer
18 tires so you don't have slamming of metal.

19 Q. The fenders?

20 A. The fenders. And that's what I grabbed hold
21 of.

22 Q. The tires?

23 A. Right.

24 Q. With the intent of pulling yourself up to

1 safety?

2 A. Right. Which I could have done but the
3 skiff ended up coming up and ended up pinning
4 me between the metal skiff and started
5 dragging me under.

6 Q. Let's go through it slowly.

7 So you jump off the skiff and the tide
8 takes you to the tires on the dredge?

9 A. Right.

10 Q. And you're intending to climb up the tires
11 onto the dredge?

12 A. Right.

13 Q. And meanwhile the skiff now is how far from
14 you?

15 A. It might have been five to eight feet.
16 That's about how far a distance they were.
17 And going under at the same time. It's
18 sinking.

19 Q. Then what happens?

20 A. And then the skiff hit me in the back as I
21 was trying to climb up.

22 Q. How did the skiff hit you in the back?

23 A. Because it kept going under. The tide
24 sucked me under and it got me.